

**FILED**

**NOT FOR PUBLICATION**

**FEB 16 2006**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

EGNACIO DORTE JOSHUA,

Petitioner-Appellant,

v.

CHERYL K. PLILER, Warden,

Respondent-Appellee.

No. 04-17500

D.C. No. CV-02-02256-WBS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
William B. Shubb, District Judge, Presiding

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER and BYBEE, Circuit Judges.

California state prisoner Egnacio Dorte Joshua appeals from the district court's order denying his 28 U.S.C. § 2254 habeas petition challenging his

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conviction for two counts of first degree murder with personal use of a firearm.

We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Joshua contends that his right to due process was violated because the jury was not given an instruction on the offense of theft as a lesser included offense to robbery, the predicate felony to his felony murder convictions. Joshua further contends that his constitutional rights were violated because the jury was given an improper instruction on motive. Because the state court's decision on these issues was not contrary to or an unreasonable application of clearly established federal law, as determined by the United States Supreme Court, we affirm the district court's decision denying relief. *See Williams v. Taylor*, 529 U.S. 362, 376 (2000).

**AFFIRMED.**